



**Racing NSW**

# **GUIDELINES**

## **FOR DIRECTORS OF NSW THOROUGHBRED RACING CLUBS**

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**T**hese Guidelines have been prepared to assist Directors of NSW Thoroughbred Race Clubs to better understand their roles, responsibilities and obligations as Directors and to assist them in undertaking their duties.

The Guidelines should be read in conjunction with:

- » the Club's own Constitution;
- » the Australian Rules of Racing and Local Rules issued by Racing NSW;
- » applicable Commonwealth and State Legislation, particularly Corporations Law;
- » conditions attached to the Club's registration as a Thoroughbred Race Club; and
- » directions issued by Racing NSW from time to time.

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## A - GENERAL GUIDELINES FOR RACE CLUB DIRECTORS

### What are the Guidelines?

1. These guidelines set out the duties and responsibilities and the common standards of conduct for all Directors of NSW Race Clubs.
2. The guidelines reflect the Thoroughbred Racing Industry's underlying values of honesty, fairness and integrity.
3. While the key aim is to provide a single point of reference for the care and due-diligence expectations of Club Directors, it must be noted that they are to be read in conjunction with the Club's Constitution and any conditions attached to the Club's registration by Racing NSW.

### Why are the Guidelines Necessary?

4. The Corporate Governance demands upon Race Clubs continue to increase. Therefore, the conduct of Club Directors and Managers is now closely scrutinised by Club members, industry participants, regulators and media.
5. Club Directors, management and staff are custodians of Thoroughbred Racing Industry assets and have an obligation to ensure that the administration and management of the Club is conducted with efficiency, fairness and integrity.

### Legal Obligations

6. In particular, the service of alcohol and the provision of wagering facilities demand that the administration of Club

facilities is undertaken with the utmost integrity. Because the provision of wagering and alcohol is a core feature of a Race Club's activity, the industry is highly regulated and Directors have a responsibility to be fully informed as to their legal compliance obligations.

7. Directors must also ensure that they themselves and their management and staff are informed about the primary instruments regulating thoroughbred Race Clubs, particularly the relevant legislation, the Rules of Racing and the conditions attaching to the Club's registration.
8. Directors will provide adequate training and supervision to ensure compliance with all relevant laws relating to the Thoroughbred Racing Industry.
9. Directors will ensure that the constitutions of their Clubs contain a clear expression of the aims and purpose of the club. This is to be clearly communicated to members.

### Conduct of Directors, Management and Staff

10. Directors, Management and Staff of a Thoroughbred Race Club will pursue the aims and purposes of the Club by:
  - a) Making decisions that are consistent with these aims and purposes and the interests of members and industry participants;
  - b) Complying with any relevant legislative, industrial and administrative requirement and keeping up to date with any changes to these requirements;

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- c) Maintaining adequate documentation to support any decisions made;
- d) Treating each Club member and employee and industry participant with due courtesy and sensitivity;
- e) Providing all necessary and appropriate assistance to members of the Club;
- f) Providing access to continuous professional development for Managers, Directors and staff;
- g) Achieving operating efficiencies in accordance with Board policies;
- h) Obtaining value for Club money spent;
- i) Contributing to a safe, healthy and discrimination-free Club environment; and
- j) Not taking or seeking to take improper advantage of any Club information gained in the course of their appointment (in the case of Directors) or employment (in the case of managers/staff).

## Disciplinary Proceedings

- 11. Directors will ensure that procedures are contained within the Club's constitution for dealing with unacceptable behaviour by members, participants and patrons and will ensure that these procedures are faithfully followed and will apply the principles of natural justice in dealing with disciplinary matters.

## Responsibilities and Remuneration of Executives

- 12. Directors will ensure that Club senior management have a contract that details their roles and responsibilities and the form of their remuneration. The contract should be approved by the full Board of Directors of the Club.

## Human Resource Management and Industrial Relations

- 13. Directors should be committed to the promotion of best practice human resource management and industrial relations between management and employees. Directors should also be aware of their obligations under Work Health and Safety legislation.
- 14. Directors will make the continuing professional development and training of Club managers and employees a priority.
- 15. Directors will deal effectively with information received that relates to matters that may lead to genuine financial or non-financial loss to their Club.

## Procurement of Goods and Services

- 16. Directors should ensure that the procurement of goods and services represents quality and good value, and is done in the best interests of the Club and its members (*see C – Guidelines for the Procurement of Goods and Services*).
- 17. Directors should have in place and be committed to following a sound framework for major procurements of goods and services based on the following criteria:
  - a) All major procurements will be properly defined, documented, cost planned and approved in accordance with Board policy; and
  - b) All major procurements will be subject to appropriate written contracts with the chosen supplier in accordance with Board policy.
- 18. If a Director or Member of senior management has a real or potential material personal interest relating to

the Club's procurement activities, the nature of that interest will be disclosed at the earliest possible meeting of the Board and any conflicted Director(s) will absent themselves from the Board's consideration of the procurement.

19. Properly documented selection criteria will be used to appoint suppliers and service providers for major procurements.
20. Racing NSW's written approval is required in respect of any contract, arrangement or understanding (other than a contract of employment on standard terms) that results in any payment (or any other form of direct or indirect financial benefit) to a Director or staff member or any other direct or indirect pecuniary interest (see *current Conditions of Race Club Registration*).

## Major Capital Works

21. Directors should ensure that major capital works represent quality and good value, and are done in the best interests of the Club (see *D – Guidelines for Major Capital Works*).
22. Directors must ensure that the Club has in place a sound framework for undertaking major capital works based on the following criteria:
  - a) All projects will be properly defined, documented, cost planned and approved; and
  - b) All projects will be subject to appropriate written contracts with the chosen supplier(s).
23. Directors will act diligently and in the best interests of the Club in approving and overseeing major capital works.
24. If a Director of a Club or a related party has a real or potential material personal

interest relating to the Club's major capital works, the nature of that interest will be disclosed at the earliest possible opportunity and any conflicted Director(s) will absent themselves from the Board's consideration of the project.

## Conflict of Interest/Pecuniary Interest

25. Racing NSW's written approval is required in respect of any contract, arrangement or understanding (other than a contract of employment on standard terms) that results in any payment (or any other form of direct or indirect financial benefit) to a Director or staff member or any other direct or indirect pecuniary interest (see *current Conditions of Race Club Registration*).

## Responsible Provision of Wagering

26. Directors should support the provision of a responsible wagering environment for all patrons by:
  - a) Informing and training staff on legislative requirements and problem gambling issues;
  - b) Implementing policies to encourage responsible practices in advertising and promotions related to wagering;
  - c) Informing patrons and staff of the Club's responsible wagering policy and the availability of support services for problem gamblers; and
  - d) Establishing a safe wagering environment.

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## Responsible Service of Alcohol

- 27.** Directors should support a commitment to the responsible service of alcohol by:
- a)** Providing approved training of management and staff in the responsible service of alcohol;
  - b)** Refusing to serve alcohol to persons who are obviously or visibly affected by alcohol;
  - c)** Avoiding the promotion of alcohol in a way that could encourage minors to seek to purchase or to consume alcohol;
  - d)** Avoiding the promotion of alcohol in a way that could encourage the excessive consumption of alcohol;
  - e)** Refusing alcohol service to under age persons and requiring the presentation of Proof of Age and other approved forms of identification before providing services to persons they suspect of being minors;
  - f)** Making Club patrons aware of their responsibility under the law in respect of the supply of alcohol to minors and intoxicated persons;
  - g)** Not supporting any pricing practice which encourages the excessive consumption of alcohol; and
  - h)** Implementing and adhering to a Responsible Service of Alcohol Plan.

## Financial Management and Reporting

- 29.** Directors must ensure that:
- (1)** Financial management practices are consistent with the appropriate standards;
  - (2)** Financial decisions are consistent with the Board's approved goals and approved budgets; and
  - (3)** The Board oversees adherence to approved budgets.
- 30.** The Board should establish boundaries and limits regarding:
- a)** Capital investments;
  - b)** Remuneration and benefits;
  - c)** Protection of assets;
  - d)** Tendering;
  - e)** Cost containment;
  - f)** Efficient use of labour; and
  - g)** Prompt and detailed reporting by management where limits and boundaries are exceeded.
- 31.** Directors should ensure that financial reports that accurately reflect the true financial position of the Club are provided for each Board meeting and the operation of financial systems and financial safeguards are subject to external audit at least on an annual basis.

## Conduct of Elections

- 28.** Directors should be committed to the promotion of fair and democratic elections and maximising member involvement by adhering to relevant law and following appropriate procedures for the conduct of Club elections.

## B - GUIDELINES FOR BOARD OPERATION

### 1. Purpose

An effectively operating Board is an essential component of an effective Club. Effective Boards are clear about their practices, their role and their results. These Guidelines aim to assist Members who seek effective and efficient operation of their Board by:

- a) describing a framework for effective Board functioning;
- b) identifying best practice strategies for Board functioning; and
- c) affirming individual Director responsibility.

### 2. Definitions

'Business Plan' means any plan for the future administration of the Club (including strategic and operational plans) developed by senior management and approved by the Board.

'Close associate' means any family member, personal friend or business associate of a director.

'Material personal interest' means the Director stands to personally benefit financially or in some other material way.

'Board charter' means an agreement that outlines the role, structure and responsibility of the Board.

### 3. Guiding Principles

Boards should pursue the aims and purpose of their Club by actively ensuring that management and staff:

- a) Make decisions that are consistent with the Club's role/purpose and the interests of members and industry participants;

- b) Comply with any relevant legislative, industrial and administrative requirement and keep up to date with any changes;
- c) Maintain adequate documentation to support any decisions made;
- d) Treat each Club member, staff member, industry participant and patron with courtesy and sensitivity to their rights;
- e) Provide all necessary and appropriate assistance to members of the Club and industry participants;
- f) Promote a culture of continuous professional development and training;
- g) Strive to obtain value for Club money spent and avoid waste and extravagance in the use of Club resources;
- h) Contribute to a safe, healthy and discrimination-free Club environment; and
- i) Not take or seek to take improper advantage of any Club information gained in the course of their appointment (in the case of Directors) or employment (in the case of managers/staff).

The Board should have a clearly defined and expressed statement or equivalent expression of their aims and purpose as an organisation.

### 4. Functions of the Board of Directors

The Board of a Club is responsible to members for the overall governance and performance of the Club. The functions of the Board include the following:

- a) Providing strategic direction to the

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Club by constructive engagement in the development, execution and modification of the Club's strategy;

- b)** Appointing the Club Chief Executive and approving succession plans;
- c)** Monitoring the performance of the Chief Executive and approving senior management remuneration policies and practices;
- d)** Reporting to members and ensuring that all regulatory requirements are met;
- e)** Providing advice and counsel to management on a periodic and ad hoc basis, adding strategic value;
- f)** Ensuring appropriate compliance frameworks and controls are in place;
- g)** Approving policies governing the operations of the Club;
- h)** Monitoring financial results on an ongoing basis;
- i)** Ensuring the Board's effectiveness by operating as a team;
- j)** Ensuring the Club's business is conducted ethically and transparently; and
- k)** Overseeing strategic risk management.

## 5. Board Composition

To provide competent leadership and direction, Boards should contain, if available, an appropriate mix of skills from professions such as business, management, law, racing administration, accounting, public administration and marketing.

Board make-up should be representative of the Club membership. For example, Clubs that have a large number of women in membership should actively encourage appropriately qualified women to seek directorship.

Boards should be of an optimum size, according to the needs of the Club.

Excessively large Boards tend to be inefficient and should be avoided. However, diversity on the Board is encouraged.

In cases where Racing NSW provides financial assistance in excess of \$1 million towards major capital works it is a requirement that Race Club Boards be constituted in accordance with a structure approved by Racing NSW. This will involve the appointment of independent Board members.

## 6. Ethics

In accordance with legal and statutory requirements, Directors should:

- a)** Discharge their duties in good faith and act honestly, in the best interests of the Club, and with the level of skill and care agreed in their role expectations;
- b)** Act with required care and diligence, demonstrating commercial reasonableness in their decisions;
- c)** Declare any conflicts of interest;
- d)** Act for the benefit of the Club at all times;
- e)** Not make improper use of information gained through their position as a Director or otherwise take improper advantage of the position of Director;
- f)** Not allow personal interests, or the interests of any close associate, to conflict with the interests of the Club;
- g)** Make reasonable enquiries to ensure that the Club is operating efficiently, effectively and legally towards achieving its goals; and
- h)** Undertake diligent analysis of all proposals placed before the Board.

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## 7. Role of the Chairperson

The Chairperson's responsibilities include:

- a) Providing appropriate leadership to the Board and the Club;
- b) Facilitating Board discussions to ensure the core issues facing the Club are addressed;
- c) Maintaining a regular dialogue and mentor relationship with the Chief Executive;
- d) Monitoring Board performance; and
- e) Guiding and promoting the on-going effectiveness and development of the Board and individual Directors.

## 8. Role of the Chief Executive

The Chief Executive is responsible to the Board for the overall management and performance of the Club in accordance with the strategy, plans and policies approved by the Board to achieve the agreed results.

## 9. Conduct of Board Meetings

Key criteria for the conduct of Board meetings are:

- a) The Board should meet at least monthly on previously determined dates and conduct special meetings at the request of the Chairperson;
- b) The Chairperson establishes the agenda for each Board meeting. Board members should be encouraged to suggest items for inclusion on the agenda;
- c) The agenda for each meeting should be provided to the Directors in advance of the meeting together with written materials on certain matters to be presented for consideration. Management should endeavour to

provide material that is concise and informative;

- d) The agenda should, at a minimum, include:
  - i. minutes of the last meeting and business arising;
  - ii. finance, including race meeting reports and wagering revenue;
  - iii. Chairperson's report;
  - iv. tabling of Racing NSW correspondence; and
  - v. other business.
- e) Financial reports which accurately reflect the true financial position of the Club should be provided for each Board meeting.

## 10. Conflicts of Interest

If a Director has a real or potential material personal interest relating to Club procurement of goods and services and/or major capital works, the nature of that interest should be disclosed at the earliest possible meeting of the Board.

Racing NSW's written approval is required in respect of any contract, arrangement or understanding (other than a contract of employment on standard terms) that results in any payment (or any other form of direct or indirect financial benefit) to a Director or staff member or any other direct or indirect pecuniary interest (*see current Conditions of Race Club Registration*).

## 11. Confidentiality

Directors have a duty to question, request information, raise any issue which is of concern to them, fully canvass all aspects of any issue confronting the Club and cast their vote on any resolution according to their own

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judgement. Outside the boardroom, Directors should support the letter and spirit of Board decisions.

Directors should keep confidential Board discussions, dialogue and decisions that are not publicly known.

Confidential information received by a Director in the course of the exercise of directorial duties remains the property of the Club and it is improper to disclose it, or allow it to be disclosed, unless that disclosure has been properly authorised, or is required by law.

## 12. Board Sub-committees

The full Board is ultimately responsible for the conduct of a Club's affairs. However, larger Clubs may opt for supervision of major functional areas to be handled by specialised Committees (e.g. audit and remuneration) of the Board while ensuring that the full Board remains ultimately responsible for the Committee's decisions.

It is important that all Committees should be established with clearly defined objectives, authorities, responsibilities and tenure and that they report regularly to the full Board. The Board should ensure that the structure of each Committee is suitable having regard to the Club's size and business, the Board's composition and individual Directors expertise.

## 13. Supporting Teamwork and Diversity

Each financial year the Board should facilitate:

- a) A review and modification of the Club's strategic plan to ensure the Club's aims and purpose are realised;
- b) The agreement of role expectations for each Director that identifies what

results each Director has committed to deliver to the Board;

- c) Personal learning plans for each Director, agreed with the Chairperson, which identifies what and how new skills should be developed, based on the role expectations; and
- d) The giving and receiving of performance feedback for Directors by their peers based on the agreed role expectations.

## 14. Relationship between Board and Management

Club Directors decide what matters are delegated to management and should ensure that adequate controls are in place to oversee the operation of these delegated powers. Except in smaller Clubs with few paid staff where the use of volunteer staff is required, Directors should not participate in the day to day management of the Club. Agreements with suppliers, customers, employees, consultants, professional firms or other parties or organisations should be made by management unless such an authority is explicitly delegated by the Board to a Director, either individually or as a member of a Sub-Committee.

## 15. Strategic Planning

A critical role of the Board is to ensure that the Club is pursuing an appropriate strategy in line with its aims and purpose. To achieve this, the Board should constructively engage with management concerning the development, execution and modification of the Club's strategy.

Management and the Board should agree on the processes used to develop the Club's

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strategy and business plan. Each financial year management and the Board should discuss the substantive elements that are to be considered in the development and execution of the strategy. Management then prepares and proposes a written strategy for consideration and approval by Directors. The approved strategy forms the basis for the Business Plan, which is also prepared by management and considered and approved by the Board.

In reviewing the strategy and business plan, Directors should consider implementation and timing issues and monitor on a continuing basis the execution of the strategy against milestones and targets set down in the Business Plan.

The full Board should review and approve the Strategic and Business Plans, including financial objectives and budgets.

### **16. Board Charter/Code of Conduct**

The implementation of Board Charters or Codes of Conduct for both Boards of Directors and Committees is becoming more commonplace to ensure that all Directors/Committee members are aware of their roles and responsibilities. A Board Charter or Code of Conduct endeavours to provide the framework for the Board to deliver best practice standards of Corporate Governance in the execution of the responsibilities reserved for the Board.

Management, in consultation with the Board, should review and update the Board Charter/Code of Conduct annually, with all Directors required to review and 'sign-on' to the Charter following each election.

A model Code of Conduct is attached to this document.

## C- GUIDELINES FOR THE PROCUREMENT OF GOODS AND SERVICES

### 1. Purpose

The purpose of these Guidelines is to encourage the highest standard of practice by Clubs in regard to the procurement of goods and services, and, to assist Clubs to identify when it is proper to obtain legal and other professional advice before entering into Contracts.

### 2. Definitions

**'ASIC'** means the Australian Securities & Investments Commission.

**'Contract'** means a legally binding agreement involving mutual obligations between the Club and another party.

**'Fair'** means being just, equitable, reasonable and even-handed.

**'Financial benefit'** means and includes the following:

- a) giving or providing a Related party finance or property;
- b) buying an asset from or selling an asset to a Related party;
- c) leasing an asset from or to a Related party;
- d) supplying services to or receiving services from a Related party;
- e) issuing securities or granting an option to a Related party;
- f) taking up or releasing an obligation of a Related party; and
- g) can involve giving a Financial benefit indirectly (e.g. through one or more interposed entities), by making an informal agreement (e.g. an oral agreement or an agreement that has no binding force), and by giving a

financial benefit that does not involve paying money (e.g. by conferring a financial advantage).

**'Related party'** of a Club means and includes the following:

- a) a Director of the Club;
- b) the spouse, parent(s), or child(ren) of a Club Director; and
- c) an entity (such as a private company) controlled by a Club Director and/or the spouse, parent(s) or child(ren) of a Club Director.

**'Tender'** means a written price, bid, quotations and consultant proposals for the supply of goods or services.

**'Tenderer'** means any party submitting tenders.

**'Value for money'** means the balance between the price of goods or services and other factors relevant to quality and meeting specific needs of Clubs, for example: experience, reliability, timeliness and service.

### 3. Background

Among the most important decisions Clubs make are those relating to the provision of goods and services.

Clubs purchase a wide array of goods ranging from food and beverage to plant and equipment. Outsourced services vary from professional (accounting, legal, etc) to cleaning, catering and maintenance. For major procurements such as building projects Clubs can select a supplier by way of Tender. The terms of the Tender documents issued by a Club are likely to be legally binding on the Club in most cases. If the Tender documents include a draft Contract or

other legal terms, then Clubs should consider whether legal advice is required before the Tender documents are issued.

## 4. Guiding Principles

Boards of Directors and Management have a responsibility to ensure that purchases of goods and services are undertaken in a commercial and ethical manner and should be guided by the following principles:

- a) when a Club Board is making decisions, each Director must act in the best interests of the Club;
- b) Clubs should always seek to obtain value for money when making procurement decisions and balance both price and non-price (e.g. quality, member demand) considerations;
- c) all aspects of the procurement process should be conducted with honesty and fairness at all levels of the industry;
- d) Clubs and suppliers should conform to all legal obligations;
- e) material personal interests and conflicts of interest should be avoided, and any person (such as a Director or Chief Executive of a Club) with such an interest should declare that interest as soon as the conflict is known to that person; and
- f) inducements offered by suppliers relating to the purchase of goods or services should not be allowed to influence purchasing decisions.

## 5. Disclosure of Interests & Related Party Transactions Interests in Contracts

The Corporations Act 2001 requires that a Director of a Club who has a material personal

interest including a pecuniary interest or a conflict of interest in a Club procurement should as soon as practicable declare the full extent and nature of the interest at a meeting of the Board of Directors.

A Director who has such an interest in a Club procurement must not participate in discussions or be in the Board room while the matter is discussed, and must not vote on any decision relating to that matter. The only exceptions are if the other Directors (in the absence of the Director with the conflict) pass a resolution identifying the extent and nature of that interest and how it relates to the Club and stating that they are satisfied that the interest should not disqualify that Director from voting or being present during discussions, or ASIC or Racing NSW gives approval.

If the Chief Executive or a Director becomes aware that another Director has a material personal interest or conflict of interest in a particular matter, the Chief Executive or the Director should make sure that the conflict or material personal interest is raised at the first available meeting of the Board and noted in the minutes, even if the Director with the conflict or material personal interest fails to declare the interest. Otherwise the Club's position may be compromised.

Clubs are reminded that all Contracts with a Director, or an entity in which a Director or Chief Executive has a pecuniary interest, must first be approved by the Board and cannot be approved, even with delegated authority from the Board, by a manager or committee.

To protect their position, a Club may rely on a statutory declaration from the other party to a Contract (or the CEO of the other party if it is a company) stating whether any such person has a pecuniary interest before the Contract is entered into by the Club.

Racing NSW's written approval is required

in respect of any contract, arrangement or understanding (other than a Contract of employment on standard terms) that results in any payment (or any other form of direct or indirect financial benefit) to a Director or staff member or any other direct or indirect pecuniary interest (see *current Conditions of Race Club Registration*).

## 6. Tendering Methods

Clubs should use the following processes when selecting a supplier of goods or services by means of a Tender:

- a) parties should not seek or submit Tenders without a firm intention to proceed;
  - b) parties should not engage in any practice that gives one party an improper advantage over another;
  - c) conditions of procurement should be the same for each Tenderer on any particular project;
  - d) Clubs should clearly specify their requirements in the Tender documents and indicate criteria for evaluation;
  - e) evaluation of Tenders should be based on the conditions of procurement and selection criteria defined in the Tender documents; and
  - f) the confidentiality of all information provided in the course of procurement should be preserved.
- b) Selective – Clubs with a continuous program of works, select a limited number of Tenderers, from a register of approved Tenderers;
  - c) Expressions of interest – Clubs invite expressions of interest for specific projects or specific types of projects. Applicants are evaluated against published selection criteria and a number of those who best meet the required criteria are invited to Tender; and
  - d) Pre-qualified – Tenders are invited from a register of approved Tenderers who are known to have the ability to undertake a specialist project of the type proposed.

### Invited Tenders

There are four types of invited Tender:

- a) Open – Clubs invite Tenders by public advertisement without restriction on the number of Tenders received. Tenderers are required to demonstrate they have the right product and the necessary skills, resources, management practices and financial

### Negotiated Tenders

Clubs may negotiate with a single supplier to achieve a desired outcome provided that:

- a) non-price selection criteria and evaluation are formally documented and accepted by the Club's Board of Directors; and
- b) for capital works projects, an independent qualified expert on costs such as a quantity surveyor reviews the fees, charges and costs quoted to be reasonable for the goods, services or works offered.

Negotiations should deal fairly with all Tenderers in a manner which reflects the core principles of these Guidelines.

In some circumstances the Club may form the opinion that the lowest tendered price does not conform to the needs of the Club. An example may be the capacity of the Tenderer to provide the necessary services within time, cost and ability. In that circumstance, the next lowest price may be

used, providing it conforms to the needs of the Club and the reasons for choosing it are documented.

## 7. Preparation of Tenders

### Tender Documents

The Tender documents should:

- a)** clearly define the contractual obligations of the parties;
- b)** provide full details of all work covered by the Tender;
- c)** draw attention to any special conditions or obligations under the contract which depart from the Club's normal practice;
- d)** designate any supporting information required from Tenderers;
- e)** nominate a person for the provision of additional information;
- f)** provide positive encouragement to Tenderers, allowing them the option, in addition to submitting a conforming Tender, to show how an alternative might offer better value for money; and
- g)** identify the selection criteria on which the assessment of Tenders will be based.

### Selection Criteria

Selection criteria should include but may not be limited to:

- a)** conformity of goods or services to Club requirements;
- b)** value for money;
- c)** quality assurance;
- d)** price compared with estimated cost;
- e)** technical, management, physical, environmental management and financial resources;
- f)** current commitments;

- g)** innovation;
- h)** contractor's previous performance; and
- i)** industrial relations and work health and safety record.

Selection criteria should be clearly advertised in the Tender documents. If criteria has not been included in the Tender documents, the criteria should be determined prior to evaluation of Tenders to ensure an objective and rational basis for the assessment.

Weighting of selection criteria should be decided prior to the closing of Tenders but should not be disclosed to Tenderers.

## 8. Procedures for Invited Tenders – Advertising of Tenders

Where Tenders are called by public advertisement, Clubs should provide equal opportunity to all qualified Tenderers. Tenders should be advertised so as to attract suitable and competitive bidding and the advertisements should include as a minimum:

- a)** adequate description of the goods or services required;
- b)** advice from where Tender documents may be obtained and particulars of the contact officer;
- c)** precise details of where and when Tenders will close; and
- d)** price of purchasing the Tender documents,

In framing the advertisement, Clubs should allow a reasonable time for Tenderers to make site visits and undertake any other work necessary to allow them to respond fully. Clubs should make the site reasonably available for inspection by Tenderers.

## Communication with Tenderers

Any information given to a particular Tenderer should also be given promptly to all other Tenderers.

Clubs should nominate a person with knowledge of the work to respond to all enquiries from Tenderers. All such enquiries should be recorded, noting time and date of receipt and the issue discussed. Where an enquiry reveals a significant error, including ambiguities or discrepancies, information provided should be promptly conveyed in writing to all Tenderers. Where the Tender documents require a pre-Tender conference, such conference should be minuted and the minutes should be forwarded to all Tenderers, and become a part of the Tender documents.

## Amendments to Tender Documents

Where it becomes necessary to amend Tender documents, the amendments should be advised as an addendum to all Tenderers in sufficient time for all Tenderers to properly and fully consider the addendum before Tenders close.

Each addendum should clearly state that it is meant to be incorporated in the Tender documents. Tenderers should confirm in their Tenders that allowance has been made for each addendum.

## Receipt of Tenders

All necessary arrangements should be made to safeguard the security and confidentiality of all Tenders.

Tender documents should specify the method and time for lodgement of Tenders. Public acknowledgment of those Tenderers submitting a Tender should be made.

Late Tenders should not be accepted, except:

- a) when it is clear that the cause of the

lateness was beyond the Tenderers' control; and

- b) when there is no possibility the integrity of the procurement process has been compromised.

Where a late Tender is received, the time and date of receipt shall be noted on the document and endorsed by the recipient.

## 9. Evaluation of Tenders

Tenders should be assessed by people who are free of any conflict of interest that might undermine the objectivity of the assessment. Tenders should be assessed in a consistent fashion against the selection criteria contained in the Tender documents. If necessary, outside expertise should be called upon to help with assessment.

Any Tender which does not comply with the Tender documents should be rejected. Where a Club rejects a Tender, the reasons for such action should be clearly documented by the Club.

Should Clubs seek a revised Tender, they should specify the conditions under which revised proposals are to be submitted. Where a Tenderer offers an alternative, a comparable price for the alternative should not be obtained from other Tenderers nor should the detailed alternative be used as the basis for the recall of Tenders.

## 10. Negotiations

Should none of the Tenders be acceptable, negotiations may be conducted, preferably in the first instance with the least unacceptable with the aim of achieving a conforming Tender. Unless time constraints prevent it, Clubs should first exhaust negotiations with the preferred Tenderer(s), before negotiating with

subsequent Tenderers.

Clubs should not in post Tender negotiation unfairly seek to trade off different Tenderers' prices against others in an attempt to seek lower prices. This practice is sometimes known as 'bid shopping' and is unacceptable. Written records of all negotiations should be maintained by the Club.

## 11. Outcome(s) of Tenders

Clubs may advise the name of the successful Tenderer and the awarded contract sum.

No information should be released in relation to unsuccessful Tenders.

Unsuccessful Tenderers for major procurements should be advised (in writing) that their Tenders have been unsuccessful. For major procurements, the option of providing a debriefing for unsuccessful Tenderers, as to how their Tender performed against the selection criteria, may be pursued with the objective of enhancing future performance.

## 12. Fair Dealing

### Negotiations

In any Tender related negotiations or evaluation, the Club should deal fairly with all Tenderers in a manner that reflects the core principles of these Guidelines. Clubs should not in any way seek to trade off different Tenderers' prices against others in an attempt to seek lower prices.

### Confidentiality

Confidentiality of information, particularly intellectual property, should be preserved throughout the Tender process. This means that information provided by a Tenderer relating to a Tender should not be divulged

to another Tenderer, at any stage during the process, or after it has been concluded.

## 13. Legal Advice and Other Professional Advice

Clubs are encouraged to seek legal advice and other professional advice where appropriate before entering into major Contracts. 'Standard terms and conditions' given to Clubs by other parties are often favourable to the other party and Clubs should not simply assume that these terms also protect the Club's legal position. The main purpose of a Contract is to accurately record the agreement between the Club and the other party, and set out agreed outcomes and consequences for failure to comply. It is essential that Clubs properly understand the obligations they are undertaking when signing Contracts and also that they have the right and responsibility to negotiate the terms where necessary to obtain the best result for the Club. Clubs have experienced difficulties with being locked into long term, expensive and/or unfair Contracts which may be difficult, if not impossible, to terminate. Some common issues include:

- a) automatic renewal clauses at the end of the initial term, where the Club does not have the option to decide whether to continue;
- b) worthless guarantees and Contracts with companies that have insufficient assets to meet their obligations to the Club;
- c) inadequate performance standards for the other party; and
- d) inadequate termination options that make it difficult for a Club to terminate a Contract even if the other party is not complying with its obligations.

Whether or not a Contract is substantial

## C - GUIDELINES FOR THE PROCUREMENT OF GOODS & SERVICES

enough to require legal advice will vary depending on the size of the Club, the complexity of the situation and the size of the transaction. However, a Contract involving a commitment by a Club for more than one year and/or more than \$20,000 expenditure is a good starting point.

It may also be necessary to obtain other professional advice for a major Contract, especially for complex transactions or Contracts where specialist knowledge is required, such as major development projects. Expert advisors can also help Clubs prepare Tender documents by developing specific criteria relevant to the Contract and assist in the assessment of Tenders to identify the best option for the Club.

## D – GUIDELINES FOR MAJOR CAPITAL WORKS

### 1. Purpose

These Guidelines aim to assist Race Clubs dealing with major capital works projects by:

- a) setting out the main steps that should be followed in evaluating, planning and managing capital works projects;
- b) considering the key questions that need to be made at various stages; and
- c) describing the main criteria for selecting outside experts to assist with the project. Given the wide variety of types and sizes of Clubs, the term “major” is a relative one. By the same token, projects vary in complexity, size and importance.

The resources spent on appraisal of projects should be in proportion with the cost of the project, its degree of complexity, risk and the size of the Club. In general, more detailed appraisal criteria should be applied to projects which:

- d) are estimated to have a capital cost in excess of \$500,000 or 2.5 per cent of last audited total revenue;
- e) involve complex or specialised issues or untried technology; or
- f) are unique and unprecedented in the racing industry.

### 2. Definitions

**‘EBITDA’** means earnings before interest, taxes, depreciation and amortisation.

**‘Fixed assets’** are tangible Club assets such as land, Club buildings and facilities, and racetracks and associated facilities.

**‘Major capital works’** are improvements,

replacement or additions to Clubs’ major fixed assets.

### 3. Background

Among the most important decisions Clubs make are those relating to refurbishments, extensions or other major capital works. Clubs rely on improvements to fixed assets such as buildings, plant and equipment, racetracks and training facilities to provide services to members and industry participants, attract new patronage and retain existing patronage.

Major capital works involve a combination of materials, plant, equipment and labour and can include, for example:

- a) new equipment (e.g. air conditioning);
- b) refurbishments (e.g. viewing facilities); and
- c) extensions (e.g. to buildings and racetracks).

### 4. Guiding Principles

Major capital works should be commissioned and implemented in the best interests of Club members, industry participants and patrons in line with these principles subject to their complying with tendering processes required under Country Racecourse Development Fund or the Race Fields Capital Development Program protocols.

- a) projects should be properly researched and analysed in respect to market feasibility and the long term strategic position, facilities and needs of the Club;
- b) projects should be properly defined,

- documented, cost planned and approved;
- c)** projects should be subject to appropriate Contracts with the chosen suppliers;
  - d)** Clubs should seek legal advice on Contracts associated with major capital works;
  - e)** Club members and industry participants should be provided information and given opportunities to comment at regular intervals during the planning and execution of major capital works projects;
  - f)** the Board of Directors should act diligently and in the best interests of Club members in approving and overseeing major capital works projects;
  - g)** Directors should avoid any conflicts of interest in relation to a capital works project of the Club;
  - h)** proper processes should be used to appoint third parties including both price and non-price criteria. The criteria for selection should be documented; and
  - i)** legal requirements should be adhered to.

### 5. Preliminary Appraisal

All major capital works projects should be properly defined. This is a step-by-step process commencing with an initial brief, conceptual options with approximate cost estimates and early feasibility analysis. The systematic appraisal of all major capital works projects helps ensure the best choices are made and the best value for money is obtained. Before embarking on major capital works projects, Club Directors and management

need to carefully consider and document their justification for planned expenditure. However, it is not enough to be satisfied the investment is justified in terms of need; it is also necessary to ensure that it produces its planned benefits to Club members, industry participants and the general public. The preliminary appraisal should include a clear statement of the need which the project is designed to meet and how this will be achieved. It should identify all realistic options, as opposed to the option of doing nothing and, where possible, quantify the key elements of all options. It should assess the costs and benefits of all options (including environmental impacts), identify the preferred one, and recommend whether its benefits are sufficient to warrant incurring the costs and future impact of doing nothing. Costs include the initial capital cost and the ongoing costs generated by the use of the capital asset.

### 6. Avoiding Premature Commitments

All involved in the appraisal and management of projects should guard against the danger that when a project is mooted, it is given a degree of premature commitment. This should be avoided.

A sequence of considered decisions generally will lead to progressively greater commitment of resources, but an irrevocable commitment to proceed should only be made after all appraisal stages have been satisfactorily completed and final approval obtained. These decision points should be clearly noted in the minutes of Board and/or relevant Committee meetings.

Similarly, premature commitments to third parties should be avoided.

In assessing the appointment of any

third party, the Board should give due consideration to the extent and terms of the appointment to ensure it is in the Club's best interest. Where possible, projects should be procured incrementally to ensure each stage is completed to the Club's requirements. However, in most instances continuity of third parties is critical. Where a third party is being engaged for the entirety of a project, special consideration is required to ensure the Club retains appropriate input and controls over the project and maintains a fair but competitive environment.

For example, the appointment may include defined milestones to be achieved which are audited by an independent expert prior to progressing with the subsequent phase. Or, in other words, in considering whether to engage a third party for the entirety of a project with little or generic documentation, the Club should give careful consideration as to how this is in the best interest of the Club.

### Ability to Pay

Before moving on to a detailed appraisal of the project, the Club needs to consider its capacity to pay for the project. It should be recognised at the outset that major capital works projects involve the Club investing in additional operating assets. If the Club intends to rely on a financial institution or Racing NSW for funding, an initial approach should be made at an early stage to assess likely approval and possible repayment terms. At this stage, Clubs should conduct an assessment of the financial impact of the planned major capital works project. This assessment should include:

- a) profit and loss projections showing the impact of the project on the main revenues and costs of the Club;
- b) balance sheet projections showing the

impact of the project on the finances of the Club;

- c) cash flow analysis – showing the impact of the project on cash flow; and
- d) financial impact on the Club in the medium to long term of not renovating or improving member facilities.

While the assessment does not have to be extremely detailed at this stage, it should be recognised that more accurate analysis will improve the confidence of members in the viability of the project and the Board's ability to deliver it.

### 7. Detailed Appraisal

If the preliminary appraisal is favourable, the proposal is further developed and defined, usually by a third party entity. Clubs should be aware of the different approaches for major capital works and carefully consider which is the most appropriate approach for their specific needs, remembering that the choice lies with the Club not the third party entity. The way in which the Club allocates responsibilities to third parties throughout a project should be determined only once the Club has established its key needs and criteria for the project. Some common methods include:

- a) Design and Construction – where a managing contractor is responsible for the delivery of the Club's brief through design, documentation and construction including transparent individual sub-trade tendering;
- b) Design and then Contract – where the responsibility for the design rests with the Club which is documented by various consultants and then tenders sought from a single contractor for construction; and

- c) Construction Management – where a qualified construction expert undertakes the management of the individual trade tendering and construction for an agreed fee.

The Club enters contracts directly with each trade rather than a single building contractor. Within each methodology there are many variants and many different forms of Contract. Further, the manner in which the Contract agreement is completed can significantly affect the risk apportionment between the Club and the third party. Hence, it is imperative the Club fully understands the features of their selected procurement methodology in conjunction with the proposed form of Contract/s to ensure they address the Club's requirements as well as the third party's needs.

At this stage, the Club should answer the following questions:

**Q1 Building upon the analysis done during the preliminary appraisal, what is the justification for the project?**

Clubs need to consider in detail:

- a) affordability;
- b) benefits to members, industry participants and general public;
- c) increase to patronage/revenue;
- d) special features being considered;
- e) necessity such as market demands, compliance upgrade, wear and tear, diversification of income, operational efficiencies, maintenance problems, etc;
- f) conformity with the Club's medium to long term business plans and goals; and
- g) environmental impact and sustainability.

**Q2 Is there any design component?**

Clubs need to consider the design in the form of drawings and/or specifications

that are needed to obtain approvals from authorities (if required) and to describe quality, extent, visual and other requirements of the Club. Clubs should consider their chosen procurement methodology to ensure documentation is appropriate to the Club's contractual needs.

Clubs also need to consider who carries the responsibility and risk for the design and documentation. For example, potential gaps and errors in documentation can lead to price variations under delivery methods 7b) and 7c) noted above. Different procurement methodologies have significantly differing apportionment of responsibility. It is imperative the Club understands the risks and the resultant cost implications.

**Q3 Does the Club have the resources to manage, supervise and accept construction risk?**

It often requires a high level of expertise to properly design, document and construct. Managing capital works projects is not part of a Club's core activities, so outside expertise is usually required. In determining the Club's role, the Board should be aware that:

- a) an employee who acts as a project manager will need to be experienced and qualified and be allocated sufficient resources and time;
- b) the Club will be deemed as being the Principal Contractor under the Work Health & Safety Act and Work Health & Safety Regulations and will require a safety system and management practices which comply with Work Health & Safety Act, Work Health & Safety Regulations and NSW Government Work Health & Safety Management Systems and Auditing Guidelines edition 5 (or the most recent) or AS/NZS 4801: 2001

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(Work Health and Safety Management Systems);

- c) special insurances will be required;
- d) the Club will require expertise to properly manage the human resources needed on a construction project such as checking trade contractors' credentials (work cover authority, insurances, workers compensation declaration forms, etc);
- e) the Club will require qualified resources to establish formal contracts with trade contractors and purchase agreements with suppliers which establish scope, risk allocation, price, terms of payment, quality, time, warranties, maintenance requirements and other obligations; and
- f) opportunities for conflict of interest need to be eliminated.

A thorough financial analysis needs to be prepared at this stage quantifying financial costs (both current and ongoing capital) and specifying sources of funding. Key factors to consider in determining whether the Club should undertake the project are:

- a) Interest Coverage Ratio on Loans – this is a calculation of the number of times interest owed is covered by EBITDA;
- b) Maximum Debt Level – this is usually determined by a multiple of EBITDA. Financial institutions usually have a minimum benchmark. Note: It is important that the institution's lending criteria be properly understood;
- c) Cash flow – this needs to be monitored closely so that the repayment can be met;
- d) Return on investment – the Club should determine in advance how it intends to measure the results

projected to flow from the expenditure. Not all major capital works will be measurable in strict dollar terms.

For example, the return on a Club's investment in a training track will be difficult to quantify in financial terms. However, major capital works that are planned to deliver commercial returns should be readily quantifiable; and

- e) Impact on current operations – quantify potential disruption to business (e.g. racetrack and training facilities).

### Information to Members

Once the detailed appraisal has been completed and a decision made to proceed, members should be presented with information that addresses at a minimum, the '4Ws' (what, when, where, and why). Sufficient information should be provided to give members a clear understanding of the scope and nature of the project.

### 8. Project Implementation (Including Selection of Third Parties)

In most cases Clubs will need the expertise of a number of outside specialist organisations to enable major capital works projects to be defined, documented, cost-planned and approved. Third parties include consultants, architects, engineers, suppliers, builders, managing contractors, project managers and sub/trade contractors, among others. It is important that the distribution of tasks and responsibilities amongst third parties is in keeping with the Club's objectives and is in the Clubs best interests. For example, an independent financial auditor, quantity surveyor or project manager cannot act in any capacity which would cause them to lose

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independence and create a conflict of interest.

A combination of price criteria and non-price criteria should be used to select these third parties. The selection criteria should be documented then conscientiously applied. Transparency is of utmost importance in the selection of third parties. Regardless of the selected procurement methodology, it is recommended that Clubs have the ability to review all sub-contractor and supplier works quotations. In certain cases, the Club will benefit by obtaining the assistance of an independent cost expert for the appraisal. In some circumstances the Club and its managing contractor/construction manager may form the opinion that the lowest tendered price does not conform to the needs of the Club. An example may be the capacity of the service provider to perform the necessary works within time, cost and ability, including Work Health & Safety with appropriate site supervision. Another example, would be where geographic factors impact on a subcontractor's ability to provide a satisfactory maintenance service post construction. In such circumstances, the next lowest price should be used, providing it conforms to the needs of the Club. When making a decision it is important that Clubs document the reasons why, and why not, a particular action was taken. For example, Clubs should document why an organisation was suitable and why another was not suitable.

For a further example, selection criteria for a Managing Contractor/Construction Manager should establish whether the entity is a qualified construction company that can act as the Principal Contractor. Club Directors need to ensure the company:

- a)** has necessary insurances (professional indemnity, contract works, public liability and workers

compensation);

- b)** holds a builder's licence;
- c)** has a Workplace Health and Safety system in place which complies with Work Health & Safety Act 2000, Work Health & Safety Regulations 2001 and NSW Government Work Health & Safety Management Systems and Auditing Guidelines edition 5 (or the most recent) or AS/NZS 4801: 2001 (Work Health and Safety Management Systems);
- d)** has a quality management system in place (for example, auditing management system which complies with AS/NZS ISO 9001:2008);
- e)** has a track record (references, experience, etc);
- f)** is to be formally evaluated against the non-price criteria listed below; and
- g)** is able to provide the necessary transparency to meet the Club's requirements, for example, provide a minimum of three quotations for each sub-trade using price and non-price criteria, i.e. rural trade availability.

Clubs may make a selection by comparing capable organisations using non-price criteria, provided that fees and charges are reviewed by a qualified independent quantity surveyor (with relevant experience) engaged by the Club.

Non-price selection criteria typically include:

- a)** Intellectual property from past work;
- b)** Industry knowledge and specialty expertise;
- c)** Adequacy of insurances;
- d)** References/reputation;
- e)** Financial viability;
- f)** Resources available/capacity to perform;
- g)** Workplace Health & Safety compliance;
- h)** Unique product or services;

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- i)** Industrial and workplace relations;
- j)** Rural availability of sub-trades to meet construction criteria;
- k)** Qualifications (e.g. builder's licence);
- l)** Contractual adequacy;
- m)** Guarantees/risk taking offered;
- n)** No conflicts of interest with Board and management;
- o)** Transparency of costs; and
- p)** Weighing against other alternatives.

Subject to the above points, Clubs can negotiate with one company to achieve a desired outcome, provided that fees and charges by the company are reviewed by a qualified independent quantity surveyor (with relevant experience) engaged by the Club. Clubs may also employ an independent specialist to provide independent advice and assistance to the Club with managing

third party contractor/s (for example, quantity surveyor to audit cost data or an experienced project manager to advise on management of their contractor/s). It is important that any such appointed independent expert must be excluded from acting in any subsequent contracting role (for example, acts as the Club's Construction Manager or Managing Contractor) given the acceptance of any such subsequent role comprises the independence of their advice and creates a significant conflict of interest.

Where a Club settles on a bid that was not the lowest price, reasons for the decision should be documented.

Clubs should refer to the Guidelines for Procurement of Goods and Services for detailed guidance in this area.

## E – MODEL CODE OF CONDUCT FOR COMMITTEE/BOARD MEMBERS

### 1. Duties

- 1.1** The (name of Club) is an incorporated body under the Corporations Act 2001 (Cth (incorporated association under the Associations Incorporations Act 2009 (NSW)). Directors have legal duties and responsibilities as directors of a company, including under the common law and the Corporations Act 2001 (Cth)/Associations Incorporations Act 2009 (NSW). These duties and responsibilities include the following:
- a)** to act in good faith in the best interests of the Club and for a proper purpose;
  - b)** to exercise their powers and discharge their duties with the degree of care and diligence required of a director of a corporation such as the Club;
  - c)** not to improperly use their position to gain an advantage for themselves or someone else or cause detriment to the Club;
  - d)** not to improperly use information acquired because they are, or have been, a director of the Club to gain an advantage for themselves or someone else or cause detriment to the Club;
  - e)** to disclose material personal interests in matters relating to the affairs of the Club and to avoid conflicts of interest, including by absenting themselves from discussion of, and abstaining from voting on, such matters if required.
- 1.2** The duty to act in the best interest of the Club is primarily owed to the Club as a whole and not to any individual member of the Club or any other person or group. However, a Director may, where appropriate, have regard to the interests of other stakeholders in the Club.
- 1.3** Directors will carefully and diligently attend to the performance of their duties and the exercise of their powers as Directors.
- 1.4** Directors will use their skills and experience to the best advantage of the Club.
- 1.5** Directors will use their best efforts to ensure that the Club is properly managed and constantly improved to best meet its objectives.
- 1.6** Directors will, if possible, attend all Board meetings and Board appointed committee meetings of which they are members. Where attendance is not possible, appropriate steps should be taken wherever possible to inform the Chair of the Director's intended absence and the reason for it. Directors should use their best endeavours to attend Club race meetings, functions and events at all times.
- 1.7** Directors will be independent in their judgments and actions, and will not act in the interests only of any sectional interest.
- 1.8** Directors will at all times support and promote the philosophy that a strong Race Club structure is essential in the public interest and in the interests of the Thoroughbred Racing Industry as a whole.

- 1.9 Directors will at all times support the letter and the spirit of Board decisions in their communications and dealings with other parties even if the individual Director did not vote in favour of the issue in the relevant Board meeting. Board solidarity in a public forum is required in the interests of the reputation of the Club.

## 2. Interests of the Club and Club Members

- 2.1 Directors will perform their duties and exercise their powers in the best interests of the Club and its members.
- 2.2 Directors will perform their role objectively and impartially to ensure equity and fairness to anyone who may be affected by the decisions of the Board.
- 2.3 Directors will ensure that they do not act in any manner that may reasonably be expected to have adverse implications or consequences for the Club or its members.

## 3. Due Diligence

- 3.1 Directors will ensure that they are fully informed about the activities and affairs of the Club and the Thoroughbred Racing Industry generally, including relevant statutory and regulatory requirements, and the physical, political and social environment in which NSW thoroughbred racing is conducted.
- 3.2 Directors have a right to obtain from management all information necessary for them to properly discharge their duties and to have that information provided in a timely fashion. Directors

must make sure they ask for clarification of, or further information on any matter that they do not fully understand, including, without limitation, in the course of review of the Club financial reports and statements. Recent case law has established that information overload is not an excuse for failing to read, understand, and focus on material provided to a board of Directors, especially material relating to the approval of financial statements.

- 3.3 However, Directors recognize that questions and requests to management involving a substantial amount of work may disrupt management. Accordingly the Directors agree that if a question to management cannot be answered without special work it will be put in writing and copies sent to the Chair and the Chief Executive Officer for approval. The CEO must be copied in on all requests of management to allow for proper communication and allocation of resources. If information overload is a problem for Directors, Directors must cause management to decrease the volume of information or increase the amount of time available to absorb it. This proposition has been underlined by the recent Centro decision with respect to scrutiny of a company's accounts.
- 3.4 Directors may, in connection with the performance of their duties and functions as directors, seek independent professional advice. If it is appropriate for the Board to seek independent advice on their duties as Directors generally, that advice may be sought at the Club's expense, on the condition that the advice is provided to and for the benefit of all Directors. In these

circumstances prior written approval of the Chair is required, which will not be unreasonably withheld. The Chair may elect to refer the matter to the Board. A copy of the advice is to be provided to all Directors and the Club.

- 3.5 The Board may specify the way in which Board papers are to be set out and the amount of time prior to meetings that they require in order to consider them.
- 3.6 Directors should not vote in favour of or against a motion unless they have had sufficient time and information to consider the matter properly and to be in a position to make an informed decision.

### 4. Confidentiality and Public Comment

- 4.1 Board agendas, papers, minutes and discussions are confidential to the Club.
- 4.2 Directors will maintain the confidentiality of matters discussed at Board meetings and of information acquired by virtue of their position as a Director. Directors will not disclose confidential information concerning the Club or its business or affairs to any person, and must not, without the consent of the Chair, put themselves in a position where they are obliged to disclose any such confidential information. This obligation continues to apply after a Director's resignation or retirement.
- 4.3 The right to comment to the media on the business or affairs of the Club and to present the Club's views on matters related to thoroughbred racing is restricted to the Chair and Chief Executive Officer or officer delegated by the Chair or Chief Executive Officer. Directors will refrain from any public

comment regarding the considerations and determinations of the Board, unless authorised by the Board to do so.

- 4.4 Directors acknowledge that there are specific exceptions under law to these confidentiality obligations, such as when a person is legally required to give evidence in Court or by a regulatory body. If a Director becomes aware that they will or may be required by law to disclose confidential information, that Director must immediately inform the Chair of the relevant circumstances.

### 5. Improper Use of Information

Directors will not make improper use of information acquired by virtue of their position as a Director. Improper use of information means use of the information for a purpose other than the purpose for which the information was made available to the Director. This prohibition applies irrespective of whether the Director would gain directly or indirectly a personal advantage or advantage to any associated person or might cause detriment to the Club.

### 6. Conflicts of Interest

- 6.1 The Club's Constitution, this Code of Conduct, the conditions attached to the Club's registration as a thoroughbred Race Club and the law set high standards for avoiding conflicts of interests. Conflicts of interest are assessed in terms of the likelihood that a Director possessing a particular interest could be influenced or might appear to be influenced by that interest in the performance of his or her duties on any matter. At all times Directors

must be able to act in the interests of the Club as a whole. The interests of other persons such as associates, affiliates, other racing interests and personal interests of the Directors or their families must not be allowed to prevail over those of the Club. The pursuit of self-interest or representation of a factional interest above the interests of the Club may be a breach of a Director's fiduciary duties and other duties or obligations in respect of the Club.

**6.2** As non-exhaustive examples only, the following situations will always present a conflict:

- a)** any contract or arrangement entered or to be entered into by or on behalf of the Club with any entity or person in which or with whom the Director or any associated person is in any way interested or has a business or personal relationship; and
- b)** any matter being considered by the Board on behalf of the Club in respect of which the Director or any associated persons is in any way interested other than merely by virtue of their position as a Director (for example, where that Director, or an associated person of that Director, has an interest as a racehorse owner or has commercial dealings with a racehorse trainer and takes part in decisions regarding expenditure on racecourse facilities which may conflict with the interest of the Club in the prudent financial management of the Club's business).

**6.3** Directors will ensure that where a conflict between their personal interests or interests of any associated person

and those of the Club may arise, the Director will immediately disclose in writing the nature of that conflict to the Board.

**6.4** Unless Directors who do not have a material personal interest in the matter have first passed a resolution which:

- a)** identifies the Director, the nature and extent of their interest in the matter and its relation to the affairs of the Club; and
- b)** states that the relevant Directors are satisfied that the interest should not disqualify the interested Director from voting or being present, the Director who has a material personal interest in a matter being considered by the Board, or who is associated with a person with such an interest in that matter, may not:
  - i)** vote on the matter; or
  - ii)** be present whilst the matter is being considered by the Board; or
  - iii)** receive any relevant Board papers or other papers or information.

**6.5** As an example only, an "associated person" can be a spouse, a partner or family member, or a business, a partnership, company or trust in which the Director, a spouse or partner or family member has a financial or other interest or from which that person receives directly or indirectly any benefit, financial or otherwise.

**6.6** The Chair or Chief Executive Officer is available to discuss potential conflicts of interests with Directors. In any event full disclosure of a conflict or potential conflict must be made in writing to the Board promptly after the Director becomes aware of it.

## 7. Maintenance and Promotion of Public Confidence

- 7.1 Directors will not engage in conduct likely to bring discredit upon the Club or otherwise diminish the confidence of the public generally, in the fairness, integrity or professionalism of the Club.
- 7.2 Directors will not make any public comment or statement that is critical of, or otherwise calls into question, any decision made by the Board or any racing official under the Rules of Racing, except with the prior approval of the Chair or Chief Executive Officer.
- 7.3 Directors will report to the Chair any actions by others which may adversely affect, either directly or indirectly, any member or public confidence in the integrity of the Club or NSW Thoroughbred Racing generally.

## 8. Applications to the Board

Unless they receive the prior official approval of the Board, Directors will not initiate, support, oppose or otherwise be a party to any application or submission to the Board in respect of any matter, other than:

- a) in relation to that Director's position as a Board Member;
- b) arising solely from or in respect to the Director's status as a member of the Club, being a matter that the Director has in common with the other members of the Club.

## 9. Disclosure of Interests and Gifts

- 9.1 Each Director will, no later than the first meeting of the Board after the Director

is elected or appointed, provide the Chair with a complete listing of the Director's interests in any business that may have dealings with the Club. The listing will include indirect interests such as those of the Director's immediate family, and interests held by companies, trusts and partnerships in which the Director or the Director's family has an interest.

- 9.2 The list referred to in clause 9.1 will be kept in a confidential register maintained by the Chief Executive. It is the duty of each Director to immediately provide the Chief Executive Officer with notice of any change to the Board Member's interests. The Chair will regularly remind Directors to do so.

## 10. Issues Management and General Conduct

- 10.1 Directors should raise any matters of serious concern at Board meetings. In order that such matters can be discussed properly it is important that management and other Directors be given time to consider them, and it is good practice for a Director with a serious concern to advise the Chair in time for the matter to be added to the agenda.
- 10.2 Directors should be frank and open in Board meetings and be ready to question, request information, and raise issues.
- 10.3 In the interests of the effectiveness of the Board, and the Club as a whole, the Directors agree that they will conduct themselves with good will and in a harmonious manner. The importance of good teamwork is recognized and acknowledged.

- 10.4 Directors recognize that the effectiveness of the Board will be enhanced if contributions to Board discussions are kept brief and relevant, and if each builds on the previous contributions of others. Directors must support the Chair in maintaining order and making Board discussions effective.
- 10.5 If any matter is required by this Code of Conduct to be referred to the Chair and the Chair is unavailable, or it is inappropriate for the Chair to become involved in that matter, the Director should refer the matter to the Vice-Chair.

## 11. Decisions and Dissent

- 11.1 Decisions of the Board must be made collectively in accordance with the Constitution and Club Rules and applicable laws.
- 11.2 Directors recognize that the responsibilities to their colleagues and the Club require that, where disagreement occurs, every effort must be made to resolve the issue and avoid dissension.
- 11.3 Nevertheless, there may be times when a Director feels so strongly about a matter of principle that the Director is unable to acquiesce in a proposed decision of the Board. In such cases the Director should consider taking some or all of the following steps:
- a) making the extent of the dissent and its possible consequences clear to the Board as a means of seeking to influence the decision;
  - b) asking for additional legal, accounting or other professional advice;
  - c) asking that the decision be postponed to the next meeting to allow time for

further consideration and informed discussion.

Once a policy or decision is made by the Board, loyalty to the Club requires a Director to support that policy or decision even if the Director did not (and perhaps still does not) personally support the policy or decision.

- 11.4 Dissenting Directors have a right to resign, but understand that if they choose to remain on the Board they are bound by the collective decisions of the Board and may be legally liable for them.
- 11.5 Directors do not have the right to ignore or attempt to frustrate decisions of the Board, nor to pursue a private agenda, when they do not agree with the majority decision.

## 12. Improper or Undue Influence

Directors must take care not to use their position on the Board to influence any other member or management or staff of the Club in the performance of their duties or functions for the purpose of obtaining any advantage for themselves or any other person whether the advantage is direct or indirect. Directors must ensure contact with staff is:

- a) through the Chief Executive Officer; or
- b) in accordance with clause 3.2 of this Code of Conduct; or
- c) is otherwise in accordance with specific resolution of the Board.

## 13. Interaction with Management and Staff

- 13.1 Unless individual Directors receive specific delegations from the Board in accordance with the Club's Constitution they must refrain from participating

in the day-to-day management of the Club, making representations or agreements on its behalf, or influencing an individual Club employee or contractor.

- 13.2 In dealing with the Club's management and staff, a Director should not use language, or behave in a manner that offends, harasses or is otherwise unfair or derogatory in nature or could be taken as bullying. Directors are expected to demonstrate respect for others by acting in a professional and courteous manner. This includes all forms of interpersonal communications with other Directors and Club management and staff, including telephone and email communications.

## 14. Chair

- 14.1 The offices of Chairperson and Vice Chairperson shall be elected by the Board in accordance with the Club's Constitution and Club Rules.
- 14.2 The key role of the Chairperson or, in the Chairperson's absence, the Vice Chairperson is to:
- a) represent the Board to members;
  - b) provide leadership to the Directors creating a culture that provides an efficient and effective Board;
  - c) ensure the Board receives accurate, timely and clear information on issues before them;
  - d) facilitate an effective contribution from each Director;
  - e) promote and monitor the adherence to the Club's Constitution, Club Rules and the law by way of a governance framework and Board committees;
  - f) brief all Directors on matters arising at

Board meetings;

- g) develop a constructive and trusted relationship between Directors, the Board and management
- h) induct new Board members and any new Chief Executive Officer under the Club's induction process
- i) ensure the performance of the Board and its committees are evaluated on an annual basis in accordance with the Club's performance review management programme; and
- j) facilitate Directors regularly being updated on the nature of the business, current issues and the corporate strategy.

## 15. Board Committees

- 15.1 Amongst others, the Board may establish Board Committees in accordance with the Club Constitution to examine in more detail important issues facing the Club and to prepare concise reports and recommendations to the Board on those matters. The formation of a committee does not imply a fragmentation or a reduction of the Board's responsibilities.

Amongst others as necessary, the Board should consider establishing the following committees:

- a) Audit & Risk;
- b) Finance & Remuneration ;
- c) Property Development; and
- d) Racing.

- 15.2 The Board may establish a charter for each committee, which sets out its role, responsibilities and composition. The Board should determine the membership of a Board Committee.

- 15.3 Each Board Committee will meet

regularly and provide a report to the next full meeting of the Board.

- 15.4 The Board will review the performance of each Board Committee at least annually.

## 16. Guidelines for the Composition of the Board of Directors

- 16.1** In consideration of appointment of any casual vacancies to the Board or assessing actual or potential candidates for Director elections at the required times, the Board must at all times:
- a)** take into consideration that there needs to be a balance of skills and broad expertise on the Board; and
  - b)** periodically review Board membership succession planning and to be proactive in identifying members of the Club who have the skills and expertise required for service on the Board.

## 17. Board Evaluation

The Board will regularly review its and the Club's performance by:

- a)** annually assessing the necessary and desirable expertise of the Board;
- b)** annually evaluating the Board's performance in meeting the Club's objectives and the Club's performance;
- c)** reviewing induction processes for new Board members to put them in a position in order for them to effectively discharge their duties;
- d)** assessing its processes for ensuring Directors are properly informed about Club activities and the industry.

## 18. Enforcement of the Code

- 18.1** If the Board determines by resolution that there is evidence suggesting that a Director has breached this Code of Conduct, that Director will be given a reasonable opportunity to provide the Board with an explanation of the relevant conduct and respond to questions from the Board. If the Board by resolution is satisfied, after having heard the Director's explanation and responses (or is otherwise satisfied if the Director has not accepted the opportunity to provide an explanation), that the Director has breached this Code of Conduct:
- a)** in extreme cases, the Chair (or Vice Chair if the Chair is the Director at issue) may request that the Director tender their resignation from the Board; or
  - b)** the Board may pass a censure motion which may:
    - (i)** exclude the Director from attending conferences or functions on behalf of the club;
    - (ii)** exclude the Director from taking part in Board committees or other internal roles within the Club; and/or
    - (iii)** terminate the Director's appointment to a Board committee; and/or
  - c)** convene a general meeting of the Club to consider removal of the Director from office.



# APPLICATION RACE CLUB REGISTRATION

## CLUB DETAILS

FULL NAME OF RACE CLUB:

Chairperson's Name:  Phone:  Mobile:

Address:  Email:

Chief Executive's (or Secretary's) Name:  Phone:  Mobile:

Address:  Email:

Postal Address for Club:

Race Club Email:  Race Club Office Phone:  Race Club Fax:

## CLUB AFTER HOURS INFORMATION

Contact Name:  After Hours Phone:  Racecourse Phone:

After Hours Email:

## SENIOR MANAGEMENT INFORMATION

1 Name:  Phone:  Email:

2 Name:  Phone:  Email:

3 Name:  Phone:  Email:

4 Name:  Phone:  Email:

5 Name:  Phone:  Email:

Number of Financial Members:  Corporate Status (Incorporated, Association etc)

Name of Racecourse (s)

Address of Racecourse (s)

Status of Land (Crown Freehold etc)

If Crown Land, name and address of trust board, or manager of the reserve trust

Any conditions under which the Race Club occupies the racecourse

## Country Race Clubs Only

Name of Racing NSW Country Member

Racing Association Club is Affiliated with

Member: Under the Racing NSW Country Constitution each Club (being a Member, needs to nominate a person from their Committee to represent the club. This is a different position to your Association Delegate. The elected person holds the voting rights for your club and can vote in RNSWC elections as well as attend the Annual General Meeting.



# APPLICATION

## RACE CLUB REGISTRATION

### Club Directors/Committee Members

(Identify Chairman, Vice Chairman and Treasurer)

Name #1:  Address:

Phone:  Fax:  Email:

Name #2:  Address:

Phone:  Fax:  Email:

Name #3:  Address:

Phone:  Fax:  Email:

Name #4:  Address:

Phone:  Fax:  Email:

Name #5:  Address:

Phone:  Fax:  Email:

Name #6:  Address:

Phone:  Fax:  Email:

Name #7:  Address:

Phone:  Fax:  Email:

Name #8:  Address:

Phone:  Fax:  Email:

Name #9:  Address:

Phone:  Fax:  Email:

Name #10:  Address:

Phone:  Fax:  Email:

Name #11:  Address:

Phone:  Fax:  Email:

**DECLARATION:** Please declare below the names of any Directors/Committee Members of the Race Club, or the Race Club Secretary/Chief Executive who hold a current license (trainer, bookmaker's clerk, stablehand etc) issued under the Rules of Racing and /or by Racing NSW. If there are no current licence holders, indicate by stating "nil". It will also be necessary for you to advise Racing NSW if a Director/Committee Member or the Race Club Secretary/Chief Executive takes out a licence during the year.

**Name**

**Type of Licence**



## APPLICATION

### RACE CLUB REGISTRATION

#### RACING NSW MINIMUM STANDARDS

Racing NSW has established Minimum Standards for racing and training on NSW racecourses, to which are referred below.

Does your Club meet the requirements of the Minimum Standards?

Please outline areas in which your club is working towards meeting the requirements of the Minimum Standards.

Please outline measures taken by your club to identify and report any deficiencies that may exist against the Racing NSW Minimum Standards

Please outline measures taken by your club to rectify any deficiencies in meeting Minimum Standards.

## OTHER REQUIREMENTS

In seeking registration, Race Clubs are required to provide the following information:

- Audited Financial Statements for the year ending 30 June 2012. (If audited statements are not available, Race Clubs are required to provide unaudited accounts with their application and to provide audited statements as soon as they are available);
- Recurrent Budget for 2012/13;
- Capital Works Budget for 2012/13-14;
- The Race Club's 2011/12 Annual Report;
- A copy of the Race Club's current Constitution or Memorandum and Articles of Association;
- A current copy of your Club's strategy for the investment of financial assets.
- A copy of the Race Club's Code of Conduct for Directors and Staff;
- Outline processes adopted for the avoidance of conflicts of interest by Directors and Staff and to determine the suitability of persons to be appointed as Directors and Staff.

Race Club registration with Racing NSW is subject to the Race Club and its Directors and Officers being bound by the following conditions:

- The Race Club is being maintained as a non-proprietary organisation in terms of the Racing Administration Act, 1998;
- Adherence to the Race Club's Constitution or Memorandum and Articles of Association;
- Adherence to Minimum Standards set by Racing NSW in accordance with Division 1 of the Thoroughbred Racing Act 1996;
- Compliance with Federal and State laws, including but not limited to, those relating to racing and wagering issues, liquor licensing matters and Occupational, Health and Safety issues;
- Adherence to the Rules of Racing NSW;
- Compliance with directions issued by Racing NSW in terms of Clause 15, of Schedule, Part 2 of the Totalizator Act 2009;
- Compliance with directions issued by Racing NSW in respect of licensed persons;
- Notification of any changes to membership of the Board/Committee of the Race Club or in the position of Chief Executive/Secretary of the Race Club;

- Racing NSW's written approval is required in respect of any contract, arrangement or understanding (other than a contract of employment on standard commercial terms) that results in any payment (or any other form of direct or indirect financial benefit) to a Director or staff member or related party of a Director or staff member or any other direct or indirect pecuniary interest. (The Race Club agrees that if it fails to comply with this requirement, Racing NSW may direct the Race Club to rescind any such contract, agreement or understanding and the Race Club will comply with any such direction).
- Racing NSW's entitlement to cancel or suspend the registration of any Race Club will include by reason of the Race Club:
  - Breaching any of the conditions of its registration; or
  - Become financially unviable.

## REQUIREMENTS FOR RACE CLUBS REGARDING DIRECTORS AND OFFICERS

**Except as approved by Racing NSW in writing, the Directors and Officers of a Race Club are not to be a person who:**

- is an employee of a race club or racing association; or
- is a member of the governing body of another race club, or
- holds a licence issued by Racing NSW, or in the case of a Category D Country Race Club as defined in the Minimum Standards, holds a licence issued by Racing NSW to be a Trainer, Trainer Partnership (partner of), Jockey, Apprentice Jockey, Approved Rider, Bookmaker and Bookmaker Company (Director or Shareholder thereof); or
- is registered by or with Greyhound Racing NSW under the Greyhound Racing Act 2009 (NSW) or Harness Racing under the Harness Racing Act 2009 (NSW); or
- Currently, or during the previous 10 years has been, warned off, disqualified or named on the Forfeit List under the Rules of Racing; or
- During the previous 10 years has been convicted in NSW of an offence that is punishable by imprisonment for 12 months or more, or convicted elsewhere than in NSW of an offence that, if committed in NSW, would be an offence so punishable; or
- is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankruptcy; or
- is a mentally incapacitated person.

**(Clubs are required to make written application to Racing NSW if they have Directors or Officers to which a. to e. above applies)**

**Declaration:** I declare that the requirements contained in this application have been drawn to the attention of the Directors and Officers of the Race Club, who agree to be bound by the above conditions under which the registration will be granted and that the information included has been provided in good faith and to the best of my knowledge.

### Chief Executive/Secretary:

Name \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Print Form

Please print and sign this form and lodge via email or post





***Racing NSW***

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